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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(El Dorado)

In re CLINT D., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CLINT D.,

Defendant and Appellant.

C057763

(Super. Ct. No.  
PDL20070096)

Clint D., a minor, appeals the juvenile court's adjudication of a petition filed under Welfare and Institutions Code section 602, finding him guilty of eight counts of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1), one count (count II) of discharging a firearm at a vehicle (Veh. Code, § 23110, subd. (b)), and one

count (count III) of engaging in a conspiracy to commit assault (Pen. Code, §§ 182, subd. (a)(1), 245, subd. (a)(1).)

He contends: (1) there was insufficient evidence as to count II that he intended to do great bodily injury, (2) there was insufficient evidence as to the assault counts, and (3) there was insufficient evidence to support a conspiracy.

Substantial evidence supports the adjudication, and we shall affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

On Thursday, the 25th of January, 2007, Clint D. and Christopher T. were shooting at targets with a BB gun, when Clint D. suggested they shoot at passing cars. Christopher T. agreed, so sometime after 10:00 p.m., the pair shot at approximately six cars passing on Blair Road, and hit at least four of them.

They went out again the next night around 10:30 p.m. and shot at 10 to 15 cars on Pony Express Trail. On Saturday, January 27, from approximately 11:00 a.m. to 2:00 p.m., they shot at five to seven cars on Blair Road, and hit four or five of them. On the way back to Clint D.'s house, they met Amber S., who said she wanted to shoot with them.

After the trio got to Clint D.'s house, the boys started loading up their BB guns, and said they were going over to the fence by Highway 50. They went down to an area near the highway, climbed the fence, and started shooting the guns. One of the guns belonged to Clint D. and one belonged to Christopher

T. Amber S. took the gun once, and shot at two or three cars. They shot at cars for an hour or two. They heard the glass break on at least five cars they hit.

Amber S. and Christopher T. eventually left Clint D. at his house and went to Christopher's house. It was almost dark when they left. Around 9:00 or 9:15, p.m. they went out and started shooting at more cars. One of the cars they hit belonged to El Dorado County Sheriff's Deputy Daniel Rath (count I). His passenger side window was shot out shortly after he took a vandalism call from a man who had his passenger side rear window shot out.

Shannon Gray testified that sometime around January 27th, her passenger door was shot with a BB gun around 9:00 or 9:30 p.m. as she was traveling on Pony Express Trail (count IV).

David Troupe was driving with his dog in the back seat when his back rear passenger window was shattered. He was on Pony Express Trail in Pollock Pines (count V). This occurred around 10:00 to 10:30 p.m., sometime near the end of January, but Troupe was unsure precisely which day it occurred.

Robert Dominikus was driving on Blair Road with his wife in the passenger seat when their pickup was hit (count XI). Upon inspection, they found what appeared to be a BB hole on the passenger door where Dominikus's wife had been sitting. The incident occurred around 10:00 a.m. on Saturday, the 27th of January.

Carol Vetter was on Highway 50 on January 27 with her husband in the passenger seat and her dog in the back, when they heard a gunshot and the rear passenger window shattered (count VIII). Vetter stated the incident occurred around 3:30 in the afternoon.

Danny Rosso was driving his van down Highway 50 on Saturday, the 27th, when he heard a thud and felt something hit the vehicle (count IX). When he inspected the vehicle later, it looked like a pellet hole in the back passenger side of the van. Rosso's grandson had been sitting the rear seat when the vehicle was struck. The incident occurred around 2:00 or 3:00 in the afternoon.

Cheryl Coburn's vehicle was hit when she was on Highway 50 around 3:00 or 4:00 in the afternoon of Saturday the 27th (count XII). Her dog was in the back seat. The projectile left a dent in the middle of her passenger door.

On January 27th, Darrel Moore was driving his pickup on Pony Express Trail when a BB hit the rear fender on the passenger side (count VI). Moore estimated the incident occurred around 8:30 in the evening.

In addition to the charges related above, Clint D. was charged in count II with throwing or projecting a substance capable of doing serious bodily harm at a vehicle, and in count III with conspiracy to commit assault. (Veh. Code, § 23110, subd. (b), Pen. Code §§ 182, subd. (a)(1), 245, subd. (a)(1).)

The trial court dismissed counts VII and X in the interest of justice. The remaining allegations were sustained. The trial court made the minor a ward of the court, and ordered him to serve 20 days in juvenile hall, followed by 70 days commitment to the Electronic Arrest Program (EAP).<sup>1</sup>

#### DISCUSSION

##### I

##### Sufficient Evidence of Intent to Do Great Bodily Injury

Count II charged Clint D. with a violation of Vehicle Code section 23110, subdivision (b), which states: "Any person who with intent to do great bodily injury maliciously and willfully throws or projects any rock, brick, bottle, metal or other missile, or projects any other substance capable of doing serious bodily harm at such vehicle or occupant thereof is guilty of a felony and upon conviction shall be punished by imprisonment in the state prison." Clint D. argues there was insufficient evidence to support a finding he intended to do great bodily injury.

"When a specific intent is an element of the offense it presents a question of fact which must be proved like any other fact in the case." (*People v. Maciel* (1925) 71 Cal.App. 213,

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<sup>1</sup> The trial court found that Clint D.'s "maximum exposure here potentially could be 11 years in custody." This apparently would include punishment for one of the assault charges (four years), the Vehicle Code violation (three years) and the conspiracy to commit assault (four years).

218.) In considering the sufficiency of the evidence to prove a fact in a juvenile proceeding, we use the same standard of appellate review as in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404.) We "review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Bolin* (1998) 18 Cal.4th 297, 331 (*Bolin*).) Conflicts and questions of credibility are resolved in favor of the verdict, and every reasonable inference is indulged. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) Reversal on the ground of insufficient evidence is unwarranted unless there is no sufficient substantial evidence to support the conviction under any hypothesis whatsoever. (*Bolin, supra*, 18 Cal.4th at p. 331.)

The intent with which Clint D. acted must be inferred from the facts and circumstances surrounding the offense. Intent is rarely susceptible of direct proof, and in this case Clint D. denied ever shooting at any vehicles. (*People v. Massie* (2006) 142 Cal.App.4th 365, 371.)

The trial court was entitled to infer from Clint D.'s use of an object capable of inflicting great bodily injury when used as it was, that he intended to cause great bodily injury. The minor was shooting a BB gun at occupied, moving vehicles, and in some cases was aiming at the windows and doors of the vehicle.

In some cases the vehicles contained passengers behind the windows and doors. The fact that he appeared to target the windows of the vehicles indicates he intended to do the type of damage that would be dangerous to the occupants inside.

The BBs were projectiles capable of doing serious bodily harm when aimed at a moving vehicle. They had the capability of cracking the window glass, making it impossible for the driver to see, and causing the driver to lose control of the car.

The trial court was entitled to infer from the minor's deliberate use of a projectile capable of doing great bodily harm when aimed at a moving vehicle that the minor, in fact, intended great bodily injury.

## II

### Substantial Evidence of Assault

The trial court sustained eight counts of assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).) Clint D. argues the evidence was insufficient to support the findings as to the assault allegations in three respects. First, he argues there was no evidence he had the requisite intent to do an act, the natural consequence of which was the application of force on the person of another. Second, he argues there was no evidence he used force likely to produce great bodily injury. Third, he argues as to counts I, IV, V, and VI, there was no evidence he entered into a general conspiracy to shoot at cars.

## 1. Intent

The mental element for assault requires neither the specific intent to cause injury, nor the subjective awareness of the risk that an injury might occur. (*People v. Williams* (2001) 26 Cal.4th 779, 790.)<sup>2</sup> "Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another." (*Ibid.*)

Clint D. argues the evidence was insufficient because it showed only that he intended to hit vehicles with the BBs, not that he intended to hit the people inside the vehicles; therefore, this was not an act that would naturally and probably result in the application of force to the person of another.

This argument ignores the fact that in this case Clint D. was targeting moving, occupied vehicles, and was aiming at various locations on the vehicles, including the windows. Amber S. testified that when they hit the windows of the vehicles, they could hear the glass breaking. In at least one instance, the window exploded in, causing flying particles of glass to hit the occupant. By aiming at the windows, the juveniles were targeting one of the most vulnerable areas of the vehicles.

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<sup>2</sup> In *People v. Wright* (2002) 100 Cal.App.4th 703, 706, 713-724, we disagreed with *Williams*, but followed it as binding precedent.



Since they heard the glass breaking, they were aware of the danger to the occupants inside.

This case is not analogous to *In re Gavin T.* (1998) 66 Cal.App.4th 238, 239-240, where a juvenile threw an apple core at the side of a building, but missed, throwing the apple through a slowly closing door, and hitting the victim in the head. In that case, the juvenile was aiming at the outside wall of the building, not the victim, who was inside. Had the juvenile's aim been true, there would have been no danger to the victim inside. Here, Clint D. and his friends were aiming at moving, occupied vehicles. He intended to hit the vehicles, and was aiming at areas of the vehicles that could naturally and probably result in injury to the occupants.<sup>3</sup>

## 2. Force Likely to Produce Great Bodily Injury

Clint D. argues the force generated by a BB gun shot from a distance was not likely to produce great bodily injury. However, the degree of force is not as important as the manner in which it is used. (*People v. Hahn* (1956) 147 Cal.App.2d 308, 311.) In this case, even though the BB gun was shot at some distance, it was aimed at occupied, moving vehicles, and in some

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<sup>3</sup> Because we conclude there was sufficient evidence Clint D. intended to commit an act that would naturally and probably result in the application of force likely to produce great bodily injury on another, we reject his argument that there was insufficient evidence of the necessary intent to support the finding of a conspiracy (Part III of his opening brief).

cases at windows of moving vehicles, making the danger of great bodily injury more likely.

Defendant argues the BB gun only caused minor nicks or dents in the vehicles, and reasons the force was not likely to produce great bodily injury. However, it is not necessary that the force actually result in great bodily injury. All that is necessary is that the force was likely to cause great bodily injury. (*People v. Hahn, supra*, 147 Cal.App.2d at p. 311.)

Even though a BB does not carry the force of a bullet, there is a heightened danger when any projectile hits the unsuspecting driver of a vehicle traveling on a public road. The danger may result directly from the force of the object. It may also result indirectly, either because the startled driver loses control of the vehicle, or because the vehicle is incapacitated in some fashion. In any case, the force applied need not be great to be likely to result in great bodily injury.

We conclude that shooting a BB gun at vehicles traveling on a public street or highway constitutes use of force likely to produce great bodily injury.

### 3. Conspiracy

Clint D. argues that counts I, IV, V, and VI must be reversed because there was no evidence to support the court's finding they were committed as a part of a conspiracy.<sup>4</sup> He

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<sup>4</sup> At most a successful argument on this point would require reversal on counts I and VI, because the other two victims were unable to say precisely when their vehicles were struck.

claims he was not present when Amber S. and Christopher T. shot at these vehicles, and that the evidence showed that rather than one over-arching conspiracy, Amber S. and Christopher T. entered into a completely separate conspiracy to shoot cars on the night of January 27, 2007.

Assuming, however, that the conspiracy to shoot cars on Saturday evening was a separate conspiracy from the other conspiracies, we shall conclude Clint D. was a conspirator to that separate conspiracy, and that he never affirmatively abandoned the conspiracy.

A conspiracy is an agreement between two or more parties who have the intent to agree to and to commit a specified crime, followed by an overt act committed by one or more of the parties for the purpose of accomplishing the object of the agreement. (1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Elements, § 68, p. 277.) Where less than all of the co-conspirators participate in the acts constituting the substantive offense, all co-conspirators are guilty of any offense committed that is a natural or probable act committed in furtherance of the conspiracy, or any offense that is a natural and probable consequence of the object of the conspiracy. (*People v. Martin* (1983) 150 Cal.App.3d 148, 164.)

A co-conspirator may withdraw from the conspiracy and thereby exculpate himself from the future criminal activity of his co-conspirators. (*Loser v. Superior Court* (1947) 78 Cal.App.2d 30, 32.) However, "[a] defendant's mere failure to

continue previously active participation in a conspiracy . . . is not enough to constitute withdrawal; there must be an affirmative and bona fide rejection or repudiation of the conspiracy, communicated to the coconspirators." (*People v. Crosby* (1962) 58 Cal.2d 713, 730.)

The facts establishing a conspiracy in this case were that Clint D. and Christopher T. were talking about shooting at cars on January 27th when Amber S. asked to be included in the scheme. In furtherance of the conspiracy, the trio went to Clint D.'s house, loaded the BB guns, went near a fence by Highway 50, and began shooting. All three were going to proceed to Christopher T.'s house, but Clint D. was not feeling well, so he stayed at home. Clint D. did not tell the other two that he no longer wanted to be involved in shooting cars. Christopher T. asked Amber S. if she wanted to continue to shoot cars, and she agreed. After first stopping by Christopher T.'s apartment building, Amber S. and Christopher T. shot at more cars.

This evidence was sufficient to establish an agreement that the three of them would shoot at cars, overt acts for the purpose of accomplishing the shootings, and no rejection of the conspiracy by Clint D. that was communicated to the remaining co-conspirators. The fact that all three had planned to go to Christopher T.'s house, and that when Clint D. decided not to go, Christopher T. asked Amber S. if she wanted to "keep doing it," indicates a plan had been made for all three to participate

in the shootings, and the shooting that followed was merely a continuance of the conspiracy.

Accordingly, we conclude there was sufficient evidence of a conspiracy to support the judgment as to counts I, IV, V, and VI.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

RAYE, J.

CANTIL-SAKAUYE, J.